

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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:
WINDSOR SECURITIES, LLC, : 16-CV-01533 (GBD)
:
Plaintiff, :
v. :
:
500 Pearl Street
ARENT FOX LLP, et al., : New York, New York
:
Defendants. : February 28, 2017
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TRANSCRIPT OF CIVIL CAUSE FOR CONFERENCE
BEFORE THE HONORABLE GABRIEL W. GORENSTEIN
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

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1 THE CLERK: The case of Windsor Securities v. Arent
2 Fox, docket 16-CV-1533.

3 Counsel, please state your name for the record.

4 MS. MILLROOD: Yes. Good morning, Your Honor.
5 Samantha Millrood on behalf of the plaintiff, Windsor
6 Securities, LLC.

7 MR. KAPLAN: Alan D. Kaplan on behalf of the
8 nonparty Herrick Weinstein.

9 MR. HEFFER: And Douglas Heffer on behalf of
10 defendants Arent Fox and Julius Rousseau.

11 THE COURT: All right. Welcome everyone. You can
12 be seated if you're not speaking.

13 So we're here based upon an application from Windsor
14 Securities regarding nonparty Herrick Feinstein. I guess
15 we'll hear from you, Ms. -- is it Millrod?

16 MS. MILLROOD: It's Millrood. It's two O's but I
17 can only blame my husband. I get it from marriage.

18 THE COURT: Okay. You probably spend a lot of time
19 explaining that to people.

20 MS. MILLROOD: I do, I do.

21 THE COURT: Okay. So I mean I'm frankly surprised
22 the parties couldn't work this out but Herrick Feinstein's a
23 third party and I don't want to do anything that's going to be
24 burdensome to them. So why don't you tell me what it is that
25 you would need in deposition form that you haven't gotten in

1 writing and I assume they put it under oath if that would be
2 of any help to you.

3 MS. MILLROOD: Your Honor, we would like the ability
4 to test the position taken by Herrick Feinstein. We
5 specifically -- in the original notice we outline 30 different
6 topics for the corporate designee to respond to. And in
7 response to a letter that Herrick Feinstein provided in
8 response to our notice and the 30 topics we outlined, and it's
9 all in the letter to Your Honor, the different topics that we
10 would like Herrick Feinstein to specifically respond to.
11 Topic one, the scope and duration of the legal representation
12 by Herrick of Windsor --

13 THE COURT: I've ready your letter twice.

14 MS. MILLROOD: Yes.

15 THE COURT: So if you could focus on my question.

16 MS. MILLROOD: Okay. I'm sorry.

17 THE COURT: They have given you in writing, and I
18 can refer you to it if you like, there was a February 6th
19 letter.

20 MS. MILLROOD: Yes, Your Honor.

21 THE COURT: And obviously it was a letter in
22 response to this letter. I mean you need to step back and
23 look at this from an outside perspective. What is it that
24 they haven't already told you by documents were in that letter
25 that you're going to get out of a deposition? If you want to

1 do it topic by topic, that's fine.

2 MS. MILLROOD: I will do it whatever way you'd like,
3 Your Honor. I can do it broadly or we could do it topic by
4 topic which is what I was going to do.

5 THE COURT: Okay.

6 MS. MILLROOD: Which is why I was referring -- I
7 know you've read my --

8 THE COURT: So tell me why you need someone under
9 oath at a deposition --

10 MS. MILLROOD: We would like to be able --

11 THE COURT: Hold on. Let me finish my sentence.

12 MS. MILLROOD: I'm sorry.

13 THE COURT: To talk about the scope and duration of
14 the legal representation by Herrick of Windsor. Because
15 they've said to you this guy who worked for us years ago did
16 it. We've given you time records about that. That's all we
17 got. Why should I force someone to be deposed about that?

18 MS. MILLROOD: Well, I think we're entitled based on
19 the case law and Rule 30(b)(6). Their whole position was that
20 -- and I'm happy to go topic by topic and speak directly to
21 that. But the position that Herrick has taken is that we have
22 no one with personal knowledge to answer any of these
23 questions but 30(b)(6), and I have specific case law, says a
24 30(b)(6) --

25 THE COURT: You know what? I completely agree with

1 you. That was a very unfortunate statement that they made.
2 Okay? That we don't have anyone with personal knowledge as if
3 that was the be all and end all. But that was not the
4 substance of their position. The substance of their position
5 is that whatever knowledge the firm does have resides in these
6 records. No one else has knowledge, and therefore, in
7 preparing someone, all we'll be doing is relying on these
8 records. So let's not focus on that term. Let's focus on the
9 substance of the response.

10 MS. MILLROOD: Yes. But in addition to those
11 records, there's nuances and factual underpinnings of those
12 records that someone from a corporate designee could take a
13 position with. And if --

14 THE COURT: Well, I think you need to tell me what
15 those are because right now --

16 MS. MILLROOD: Well --

17 THE COURT: Hold on. Counsel, if I'm speaking, you
18 can't interrupt me. We're being recorded here. If someone
19 orders a transcript, the person transcribing it can only take
20 down one person talking at a time. So make sure you wait till
21 I finish whatever I'm saying before you speak. Can I ask you
22 that?

23 MS. MILLROOD: Yes, Your Honor.

24 THE COURT: Okay. So you need to now focus me on
25 what specific nuances you could possibly be talking about and

1 if we have to do it topic by topic, we'll do it. Go ahead.

2 MS. MILLROOD: I think specifically topic two, the
3 subject of the matters of representation by Herrick and
4 Windsor. I think that that's specifically outlined in the
5 documents that have been provided and we would like someone to
6 specifically address that.

7 THE COURT: Stop, stop, stop. I don't want you to
8 go on to anything -- I mean we're doing one topic at a time
9 and we're going to deal it out here and it's going to be over.
10 So you think there's someone who can talk about what Rousseau
11 was representing Windsor on during the time he was doing that
12 work, you think there's someone now at Herrick who knows
13 anything about that beyond what's in the documents?

14 MS. MILLROOD: Your Honor, respectfully, I think the
15 law requires, and I can cite you case law, that requires that
16 there is no -- a person does not have to have personal
17 knowledge to be a 30(b)(6) corporate designee. And in fact,
18 they have an obligation --

19 THE COURT: No, I understand that.

20 MS. MILLROOD: -- Herrick has an obligation --

21 THE COURT: I understand that.

22 MS. MILLROOD: -- to go back and speak to past
23 employees.

24 THE COURT: You're misunderstanding me.

25 MS. MILLROOD: I'm sorry.

1 THE COURT: I agree with you the 30(b)(6) witness
2 does not have to have personal knowledge. But for a
3 corporation to have knowledge of something, they must rely on
4 something. And the most obvious thing I can think of is
5 documents again if there's no one with personal knowledge. In
6 order to prepare a 30(b)(6) witness they could go to documents
7 or they could go to people with personal knowledge. What else
8 can they go to though? Is there anything else that they could
9 go to other than documents or people with personal knowledge
10 in order to satisfy their obligations under 30(b)(6)?

11 MS. MILLROOD: They have an obligation to speak to
12 past employees, Your Honor, not just people that are currently
13 employed by the corporation. And I can give you multiple
14 cites --

15 THE COURT: So you want them to go to Rousseau?

16 MS. MILLROOD: Rousseau or David Fox. There's
17 multiple attorneys that --

18 THE COURT: Okay. If that's the basis, I'm
19 rejecting that because you have access to Rousseau through
20 depositions or whatever else. So other than Rousseau, tell me
21 what else.

22 MS. MILLROOD: Well, there's other attorneys besides
23 Rousseau that are not parties to this action who also worked
24 on this case file, multiple attorneys.

25 THE COURT: People at the firm?

1 MS. MILLROOD: Yes, people at the firm.

2 THE COURT: Okay. That's what I -- I already went
3 over that. I said people -- I agree with you. If there's
4 people with personal knowledge at the firm, that's fine. So I
5 said to you there's two topic areas, two areas that they could
6 use to prepare a 30(b)(6) witness. One is documents and one
7 is people in their control with personal knowledge. And I
8 asked you is there anything else. And maybe the answer is no
9 or maybe it's yes, but if it's yes, tell me what is it.

10 MS. MILLROOD: I don't know what other sources they
11 have available to them without being at Herrick myself to be
12 able to speak to that but --

13 THE COURT: Okay. Well, do you have any basis to
14 believe that there could be another source other than someone
15 with personal knowledge or documents?

16 MS. MILLROOD: Not standing here today, Your Honor.
17 I don't know of any other source.

18 THE COURT: Okay. So this is their point. Now
19 let's go back to this. I mean we're going to be here a long
20 time if we keep going over these same issues. You said that
21 they should be doing something more on Topic 2, the subject
22 matters of representation by Herrick, meaning Rousseau, of
23 Windsor. And they say they have no one with personal
24 knowledge of that, what was going on there other than the
25 documents. So to me that seems to be the end of it. Tell me

1 why it isn't.

2 MS. MILLROOD: But respectfully, Your Honor, I don't
3 because the representation by Herrick was not limited to
4 Rousseau. There was other individuals who also worked on the
5 file besides Rousseau, multiple other attorneys that worked on
6 the file besides Rousseau who are past employees who Herrick
7 has an obligation to go and to speak to. It shouldn't just be
8 limited to Rousseau.

9 THE COURT: Okay. So there are other employees that
10 have knowledge of the representation. Not current but past
11 employees?

12 MS. MILLROOD: Yes. And I can give you multiple
13 case citations, Your Honor, to the obligation of a responding
14 party to go to speak to past employees in order to comply with
15 its obligations under Rule 30(b)(6). And if you'd like those,
16 I can give those to Your Honor.

17 THE COURT: No, I will accept that as a premise
18 though there's also a concept that if you have equal access to
19 those past employees I might require you to go to them. But
20 let me ask Herrick what they know about past employees who
21 know about the representation.

22 MR. KAPLAN: Good morning, Your Honor. Your Honor,
23 the only two lawyers that we know who actually worked for the
24 plaintiff in the litigation that's the subject of the instant
25 lawsuit were Mr. Rousseau and a Mr. Fox. And I'm advised that

1 both of them are scheduled to be deposed in this southern
2 district matter in the upcoming month. In fact, I think Mr.
3 Rousseau is going to be deposed within the next couple of
4 weeks.

5 MR. HEFFER: Next week.

6 MR. KAPLAN: And I know Mr. Fox, they've been
7 discussing dates with him at the end of March. Those are the
8 only two lawyers who represented Windsor at Herrick. And once
9 Mr. Rousseau left -- and just to give a little background,
10 Your Honor, Mr. Rousseau was in an insurance practice group at
11 Herrick. It was a few lawyers. I can't remember exactly how
12 many. They all left in May, June of 2010 and they took their
13 case load with them. They took their support people with
14 them. They took paralegals with them. And that's why we
15 responded the way we did to the subpoena. In fact, we even
16 offered to give them an affidavit. We said look, what do you
17 want us to put in affidavit form? We'll put it in affidavit
18 form. We gave them 8,800 pages of documents, anything we
19 could find up, having to do -- we could find, having to do
20 with the broad topic areas that were requested in the letter.
21 We take our obligation very seriously. But we said look, we
22 know of no people at our firm who can offer anything beyond
23 what the documents say. The documents say when Mr. Rousseau
24 began at Herrick, when he left at Herrick. They have his time
25 sheets.

1 THE COURT: I'm doing this topic by topic, so let's
2 --

3 MR. KAPLAN: Well, scope and duration. Obviously,
4 that's in the -- we've given them those records.

5 THE COURT: Well no, right now I'm just on topic
6 two.

7 MR. KAPLAN: Oh, that's the --

8 THE COURT: Subject matters of the representation.

9 MR. KAPLAN: Well, we gave them all of the
10 documents.

11 THE COURT: Okay. That's fine. And I had a very
12 simple question for you which is are there any people there
13 who know anything about that and you gave me an answer. So
14 you're good. Have a seat. I'll get back to you if I need
15 you. So I'm happy to get an affidavit that says what -- if
16 that helps you, that says that you just said, but I expect you
17 to go to Fox and Rousseau, not to have Herrick talk to Fox and
18 Rousseau and then take a position on what they say. Now,
19 knowing the road we're going down, I'm happy to do this topic
20 by topic. But if you think there's something else --

21 MS. MILLROOD: I --

22 THE COURT: Hold on. Let me finish. If you think
23 there's something else that is not governed by what I've
24 already said here, I'm happy to hear from you on it. If you
25 want a minute to look through this list, that's fine.

1 Whatever you'd like to do. Go ahead.

2 MS. MILLROOD: I think I'm pretty familiar with it.
3 I will do my best. I think Topic 3, other clients in the life
4 settlement industry that Herrick was representing, they had
5 held themselves out as experts in the life settlement and
6 premium finance counsel for. That's at least one.

7 THE COURT: Okay. So I'm just curious now what
8 relevance -- if it doesn't involve Rousseau or Fox, what does
9 the representation of other clients have to do with anything
10 here? Any of the claims in your case against Arent Fox and
11 Julius Rousseau?

12 MS. MILLROOD: Well, it's relevant to the fact that
13 Mr. Rousseau while at Herrick and also while at Arent Fox held
14 himself out to the plaintiff as having specialized expertise
15 skill and knowledge and that Herrick and Arent Fox had
16 specialized skill and knowledge and are held to a higher
17 standard with respect to legal malpractice claims when they're
18 holding themselves out as having specialized expertise, not
19 just that of the ordinary attorney. And I think that that's
20 how that's relevant, Your Honor.

21 THE COURT: Okay. So the idea would be, just so I
22 understand, that if you could show -- okay, again, I'm looking
23 at the topic. It's a little bit vague. If you got
24 information that they had represented certain clients in the
25 life settlement business and/or with premium finance

1 structures used in the purchase of, it says list insurance,
2 then knowing that there was a certain kind of representation
3 by Herrick at the time apart from Rousseau's and Fox's
4 representation would show what in your case? Try me again.

5 MS. MILLROOD: Which show that from the outset of
6 the relationship between Windsor and Rousseau that Rousseau
7 held himself out, and the Herrick firm, and the Arent Fox firm
8 as having this specialized skill and expertise which would
9 afford the plaintiffs better representation and expertise in
10 this industry and representing other clients in this same
11 industry which is a niche industry.

12 THE COURT: Mr. Kaplan?

13 MR. KAPLAN: Your Honor, even putting aside
14 relevance for the moment, this is something that can be asked
15 at Mr. Rousseau's deposition plain and simple. It appears
16 that the expertise that's involved here belongs to Mr.
17 Rousseau while he was at Arent.

18 THE COURT: Well, I don't know that. Maybe there
19 are other lawyers in this business at your firm.

20 MR. KAPLAN: I can put that in a -- first of all, I
21 don't know what the relevance is that there are other lawyers
22 at Herrick --

23 THE COURT: Well, you're the one who wanted to skip
24 relevance. So if you want to do relevance --

25 MR. KAPLAN: Well, I said let's put it on the --

1 THE COURT: Mr. Kaplan, if I'm speaking, you can't
2 speak. Both of you, please. This is not a conversation.
3 This is a court proceeding. If you want to go down the
4 relevancy road, we can go down that. If you want to go down
5 the lack of knowledge route we can go down that, but I can't
6 switch from one to the other. Or you can do both, but we need
7 to do one at a time. So tell me what you'd like to do.

8 MR. KAPLAN: Okay. Let's go down relevance then --

9 THE COURT: Okay.

10 MR. KAPLAN: -- since you suggested that. Herrick
11 is not a party to this lawsuit. Whatever Mr. Rousseau held
12 himself out as being is something that the plaintiff can
13 determine when they depose Mr. Rousseau. Further, we advised
14 plaintiff already --

15 THE COURT: Hold on. If you're done with relevance,
16 their point is that apart from Rousseau other attorneys may
17 have been holding themselves out as expertise on behalf of the
18 firm and that that would show something about how Rousseau I
19 guess was holding himself out.

20 MR. KAPLAN: Well, I think the way Your Honor just
21 phrased it begs the question how is that relevant to this
22 litigation. And we've already advised the plaintiff that we
23 had no other lawyers at that time who were involved in the
24 life settlement practice.

25 THE COURT: Okay. Well, that's very significant.

1 The way it was being framed was that there were other lawyers.
2 It was just Rousseau and Fox?

3 MR. KAPLAN: Correct.

4 THE COURT: Okay. Did you have another point to
5 make?

6 MR. KAPLAN: No, Your Honor.

7 THE COURT: Okay. Anything else you want to add on
8 that point?

9 MS. MILLROOD: I would just say that Mr. Kaplan two
10 seconds before, I should say two minutes before, said that
11 there's a whole insurance practice group at Herrick consisting
12 of I think he said five or six lawyers. So --

13 THE COURT: Is that correct?

14 MR. KAPLAN: No. What I was Mr. Rousseau's group
15 was five or six lawyers and that they all left in 2010 with
16 Mr. Rousseau including the paralegals and every support --

17 THE COURT: So Rousseau, Fox, plus some other
18 lawyers?

19 MR. KAPLAN: Well, Fox had already retired at that
20 time.

21 THE COURT: There were other lawyers?

22 MR. KAPLAN: There was an Eliot Kroll who's at Arent
23 Fox. There was another lawyer who went to a completely
24 different firm. But they all left back then in approximately
25 June of 2010.

1 THE COURT: Okay. I'm sorry, anything else you
2 wanted to say on that topic?

3 MS. MILLROOD: On that particular topic just the
4 fact that there were other lawyers besides Mr. Fox and Mr.
5 Rousseau that specifically dealt with the insurance practice
6 group under Mr. Rousseau.

7 THE COURT: Okay. My ruling on that is the same as
8 the other one. The way to get this is not to have Arent Fox
9 reach out to these lawyers who left years ago but to have the
10 plaintiff in this case depose these lawyers, some of whom are
11 already being deposed and that's the best way to get at this
12 information.

13 What other topic would you like to raise with me?

14 MS. MILLROOD: I would like to raise, Your Honor,
15 specifically Topic A, the discontinuation of Mr. Rousseau's
16 employment and/or affiliation with Herrick. Not just the date
17 that he left, Your Honor, but the circumstances surrounding
18 his departure. None of that is within the documents that have
19 been provided to us, nor do we have any source information.
20 And Mr. Rousseau's account of why he left may be very
21 different of Herrick's assessment of why he separated and/or
22 left.

23 THE COURT: Mr. Kaplan?

24 MR. KAPLAN: Yes, Your Honor. On the second page of
25 our February 6 letter that we sent to plaintiff's counsel's

1 office, third paragraph, we say specifically that Mr. Rousseau
2 left Herrick on a voluntary basis. So I'm not sure what else
3 they're looking for. I'm sure Mr. Rousseau will say the same
4 thing and they could find out that at a deposition. So I
5 don't know what they anticipate is going to be said that would
6 warrant any further information from Herrick.

7 THE COURT: When you say Herrick is not able to
8 disclose any additional information, what did you mean by is
9 not able?

10 MR. KAPLAN: Meaning that in terms of the
11 discontinuation of his employment, that's all that we know.
12 We know the date that the group left and we know that it was
13 voluntary the way practice groups move around all the time
14 from law firm to law firm.

15 THE COURT: And how were you able to find out that
16 information that it was voluntary?

17 MR. KAPLAN: Probably from the documents that we
18 provided to plaintiff's counsel. And I think some of us may
19 remember that they just left, they just got a better deal,
20 whatever it was, whatever their reasons were. If they're
21 looking for some nefarious reason that they were terminated or
22 thrown out for cause, it's not there. It doesn't exist.
23 We're willing to put that in an affidavit for them, Judge.

24 THE COURT: Ms. Millrood?

25 MS. MILLROOD: Yes, Your Honor. We're not looking -

1 -

2 THE COURT: Anything you want to add?

3 MS. MILLROOD: -- for a nefarious motive. We're not
4 looking for any kind of bad faith. We want to understand the
5 circumstances of Mr. Rousseau's departure from Herrick and
6 what he took with him, what he did not take with him, what
7 life settlement or insurance practice group clients went along
8 with him, what was told to the clients of Herrick who were
9 leaving with Mr. Rousseau. There are several specific nuance
10 questions within that general topic that's provided at Topic
11 Number 8 which I think we are entitled to probe. And there
12 are people at Herrick I'm sure that were there at the time,
13 not that there has to be personal knowledge, but at the time
14 that Mr. Rousseau and that mass departure occurred.

15 THE COURT: Okay. So we have two new things. One
16 is what clients left with him and what clients were told. Mr.
17 Kaplan, thoughts on that?

18 MR. KAPLAN: Judge, frankly, I don't know what
19 clients left with him. Mr. Rousseau can answer that because
20 he would know what clients he serviced once he got to Arent
21 Fox. He can testify as to what he told those clients. I
22 think you need to depose Mr. Rousseau first and if counsel
23 still thinks that there are nuances that need to be explored,
24 she can then make an application after that.

25 THE COURT: What's the relevance of what clients

1 other than you went with him?

2 MS. MILLROOD: The relevance is just to see and
3 understand what the I should say the nature was of this
4 departure and what was represented to the clients. I mean
5 this is not just limited to Mr. Rousseau but there was a whole
6 mass exodus of this insurance practice group that left. And
7 we would like to understand the circumstances of that
8 departure.

9 THE COURT: Okay. Same ruling as before. This is
10 plainly an area that Rousseau is going to have the best
11 knowledge. If there's some reason to -- and I question the
12 relevance of this given the burden that it's going to put on
13 Herrick and the fact that they don't seem to know anything
14 about it anyway. So I'm not going to say it's impossible that
15 after you depose Rousseau and other lawyers there may not be
16 some role for Herrick. I doubt it. But right now based on
17 this record I don't find it appropriate to burden Herrick with
18 this.

19 MS. MILLROOD: Okay.

20 THE COURT: Any other topics?

21 MS. MILLROOD: Yes, Your Honor. Topics 20 and 21
22 which relates to the attorneys fees and costs incurred by
23 Windsor and paid to Herrick.

24 THE COURT: Yes.

25 MS. MILLROOD: I mean I think we're entitled to have

1 someone from Herrick speak to the time and billing entries and
2 monies paid --

3 THE COURT: What do you need beyond the time and
4 billing entries?

5 MS. MILLROOD: Well, there's some specifics in the
6 billing entries and time entries that I think we're entitled
7 to probe representative --

8 THE COURT: Probe with Rousseau but why did --

9 MS. MILLROOD: But it's not just Rousseau --

10 THE COURT: Hold on, hold on. Gosh.

11 MS. MILLROOD: Sorry.

12 THE COURT: I'm not used to being treated like this,
13 Ms. Millrood. You'll have to excuse me. I understand why you
14 need to probe things with Rousseau about the time entries but
15 why is it that there would be someone at Herrick who would
16 know anything about it?

17 MS. MILLROOD: May I speak, Your Honor? I apologize
18 --

19 THE COURT: When I ask you a question -- if you
20 can't tell the difference between when I'm in the middle of a
21 sentence and asking you a question, then we're going to be
22 here a long time. But that was a question and you can answer
23 it.

24 MS. MILLROOD: The time entries aren't limited to
25 Mr. Rousseau, Your Honor. They include other attorneys. And

1 the fees that were paid are not just for Mr. Rousseau's time
2 but include other attorney time that was charged to Windsor.

3 THE COURT: Okay. And are any of those attorneys
4 still at Herrick?

5 MS. MILLROOD: Based on Mr. Kaplan's representation
6 I guess not. But not all of them are at Arent Fox either,
7 Your Honor.

8 THE COURT: Okay. Well once again, my ruling on
9 that is go to the attorneys and if some of them are with third
10 party firms you should go to them instead of going to Herrick.
11 That's having Herrick do something, sort of gather information
12 that's just as easily gathered by the plaintiff. Next topic.

13 MS. MILLROOD: Other than -- these are very general.
14 The rest are general. Documents contained in the files
15 maintained by Herrick that were provided to our firm, having
16 someone speak to the authenticity, the specifics contained
17 within -- at least take a position with the specifics
18 contained within the documents that were produced by Herrick.

19 THE COURT: Well, authenticity, I'm happy to get an
20 affidavit if you would like that says that the documents they
21 provided to you are authentic. Would you like that?

22 MS. MILLROOD: If that's what we are limited to,
23 Your Honor.

24 THE COURT: Right now that's all you're limited to.
25 So if you want, I'll get it for you. Okay. So we need an

1 affidavit on the authenticity of the documents. I think we
2 also talked about an affidavit that there's no information
3 about the circumstances of the departure and that there's no
4 information regarding the circumstances other than the
5 announcement that this individual was leaving. Anything else
6 that you need an affidavit on?

7 MS. MILLROOD: Your Honor, at least I ask that the
8 Court reserve ruling after Mr. Rousseau's deposition is taken
9 to the extent that any -- we couldn't get certain information
10 from Mr. Rousseau regarding his affiliation with Herrick and
11 his employment with Herrick and some of the topics outlined
12 herein, that we at least be given the opportunity to address
13 those topics again at that time.

14 THE COURT: Well yes, as I said, if something comes
15 up in Rousseau's deposition that makes you believe that there
16 would be information that would be in the possession of
17 Herrick, I'm certainly happy to hear from you. Obviously, you
18 should go to Herrick first.

19 MS. MILLROOD: Your Honor, Topic 26 was the
20 communications between Herrick and Arent Fox and/or Mr.
21 Rousseau relevant to this litigation.

22 THE COURT: You want an affidavit on that?

23 MS. MILLROOD: We would like to question a Herrick
24 corporate designee on that topic, Your Honor.

25 THE COURT: But if it says hasn't had any, that's --

1 you're sticking with that, right Mr. Kaplan?

2 MR. KAPLAN: We haven't spoken to Mr. Rousseau.

3 I'll make a representation to the Court --

4 THE COURT: No, no, we need an affidavit.

5 MR. KAPLAN: Okay. I'll do that. But just for
6 counsel's purposes, we spoke when we received the subpoena.

7 We told them that we had been served with a subpoena and --

8 THE COURT: I view Arent Fox and Rousseau as meaning
9 them --

10 MR. KAPLAN: Correct.

11 THE COURT: -- personally, not their lawyer.

12 MR. KAPLAN: Their lawyer. I'm sorry. In fact, I
13 spoke to counsel who's sitting here at the table with me from
14 Foley --

15 THE COURT: But they're not pro se. You're the
16 lawyer for Arent Fox, right?

17 MR. HEFFER: I am, Your Honor.

18 MR. KAPLAN: Right.

19 THE COURT: Because the inquiry is not as to whether
20 you've spoken to the lawyer -- let me finish my sentences,
21 everyone. The inquiry is not as to whether you spoke to the
22 lawyer for Arent Fox or Rousseau, but whether you spoke to
23 them directly or anyone from the firm. Obviously you have to
24 do some canvassing to figure that out. She needs an affidavit
25 on that.

1 MR. KAPLAN: Okay. That's fine, Your Honor.

2 THE COURT: Ms. Millrood, anything else?

3 MS. MILLROOD: I think Topic 29 we already
4 addressed. Excuse me, Topic 28 the experience and supposed
5 expertise in the life settlement industry. That was one of
6 the -- that was encompassed within our previous discussion,
7 Your Honor, so I won't re-raise that. And then I think that
8 we've addressed the different topics. Topic 29, again, it's
9 the same -- it's similar communications between Rousseau
10 and/or Herrick and/or Windsor relevant to this litigation
11 which was encompassed within the previous Topic 26 that we
12 already discussed.

13 THE COURT: Okay. Can you get the affidavit in the
14 next week or two?

15 MR. KAPLAN: Yes, Your Honor.

16 THE COURT: Okay. Anything else, Ms. Millrood?

17 MS. MILLROOD: No, Your Honor. Thank you.

18 THE COURT: Mr. Kaplan, anything?

19 MR. KAPLAN: No, thank you, Your Honor.

20 THE COURT: Mr. Heffer, anything?

21 MR. HEFFER: No, Your Honor.

22 THE COURT: All right. Thank you everyone.

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1 I certify that the foregoing is a court transcript from
2 an electronic sound recording of the proceedings in the above-
3 entitled matter.

4 *Mary Greco*

5 _____
6 Mary Greco

7 Dated: March 1, 2017
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